

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

APR 13 2007

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2006-0410-PR
)	DEPARTMENT A
v.)	<u>DECISION ORDER</u>
)	
SAMUEL GABRIEL CRUZ,)	
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause Nos. CR-64700 and CR-64951

Honorable Michael D. Alfred, Judge

PETITION DISMISSED

Barbara LaWall, Pima County Attorney
By Louis M. Spivack

Tucson
Attorneys for Respondent

Samuel Gabriel Cruz

Tucson
In Propria Persona

V Á S Q U E Z, Judge.

¶1 Petitioner Samuel Gabriel Cruz pled guilty in two causes to first-degree burglary, second-degree burglary, armed robbery, aggravated robbery, aggravated assault, three counts of kidnapping, sexual abuse, theft of a means of transportation, and theft of a

credit card. He admitted having one prior felony conviction and having committed the offenses in CR-64951 while on release in CR-64700. The trial court sentenced him to a combination of concurrent and consecutive, presumptive prison terms totaling 21.75 years.

¶2 Cruz then filed a series of unsuccessful petitions for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S., followed by corresponding petitions for review of the trial court's adverse rulings. We denied relief on his successive petitions for review in *State v. Cruz*, Nos. 2 CA-CR 2001-0220-PR, 2 CA-CR 2001-0344-PR (consolidated) (memorandum decision filed Mar. 28, 2002); *State v. Cruz*, No. 2 CA-CR 2002-0442-PR (decision order filed July 20, 2004); and *State v. Cruz*, No. 2 CA-CR 2005-0226-PR (memorandum decision filed May 11, 2006). The supreme court denied Cruz's petition for review of our latest ruling in No. 2 CA-CR 2005-0226-PR, and we issued our mandate on November 21, 2006.

¶3 On November 22, Cruz filed the present "petition for special action," which in our discretion we have categorized as a petition for review. In it, Cruz contends the trial court abused its discretion by dismissing, in its minute entry of June 7, 2005, his most recent petition for post-conviction relief. That June 2005 ruling is precisely the same order from which Cruz previously petitioned for review in No. 2 CA-CR 2005-0226-PR.

¶4 Pursuant to Rule 32.9, Ariz. R. Crim. P., 17 A.R.S., a party aggrieved by a trial court's final decision in post-conviction proceedings may file either a motion for rehearing or a petition for review or both. Special action relief is not appropriate when the aggrieved

party has another “equally plain, speedy, and adequate remedy.” Ariz. R. P. Spec. Actions 1(a), 17B A.R.S.; *see also King v. Superior Court*, 138 Ariz. 147, 149, 673 P.2d 787, 789 (1983) (“We generally accept jurisdiction of [a petition for special action] only where the issues raised in the petition are such that justice cannot be satisfactorily obtained by other means.”); *State v. Aguilar*, 170 Ariz. 292, 295, 823 P.2d 1300, 1303 (App. 1991) (petition for special action may be appropriate when Rule 32 provides no avenue for relief). Not only did Cruz have “an equally plain, speedy, and adequate remedy” here by virtue of Rule 32.9, but he had already exercised that remedy by petitioning both this court and the supreme court for review in No. 2 CA-CR 2005-0226-PR.

¶5 Having previously reviewed the trial court’s ruling and found no abuse of its discretion in denying post-conviction relief, we dismiss Cruz’s “petition for special action” seeking further, unauthorized review of the trial court’s order of June 7, 2005.

GARYE L. VÁSQUEZ, Judge

Chief Judge Pelander and Presiding Judge Howard concurring.